

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

BUDDY LEE CRINER, #1249251	§	
	§	
VS.	§	CIVIL ACTION NO. G-06-504
	§	
TODD BOUTON, ET AL.	§	

**OPINION AND ORDER**

Before the Court is the “ Motion Requesting Proceeding In Forma” filed by Plaintiff, Buddy Lee Criner, challenging this Court’ s application of the “ Three Strikes Provision” of 28 U.S.C. §1915(g). Criner asserts that “ Plaintiff was not incarcerated” when he filed two cases in the Northern District of Texas, Wichita Falls Division, under cause no. 7:01-cv-198; styled Criner v. Garcia, et al. and cause no. 7:01-cv-016; styled Criner v. Pruitt. Criner further requests that this Court “ To allow proceeding to continue in this case at this time. Because Plaintiff was not incarcerated at filing these civil rights lawsuits under the ‘ three strike provision’ of §1915(g).” Criner also requests that this Court allow him to make payments towards the balance of the filing fee of \$341.00 until the fee is paid in full.

After a careful review of Criner’ s prior lawsuits, the Court is convinced that § 1915(g) does not bar him from proceeding *in forma pauperis*. It appears that both of Criner’ s cases filed in the Wichita Falls Division under cause no. 7:01-cv-198, styled Criner v. Garcia, et al. and cause no. 7:01-cv-016, styled Criner v. Pruitt, were submitted to the Clerk of Court for filing while Criner was not incarcerated. Therefore, Criner should be allowed to continue to proceed in forma pauperis in the instant action.

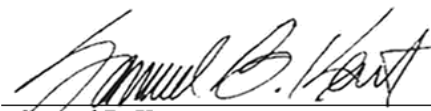
The Court notes that on December 5, 2006, Criner properly executed the appropriate authorizations for the withdrawal of funds from his inmate trust account to pay the full filing fee in the cause pursuant to the provisions of the Prisoner Litigation Reform Act.

It is, therefore, the **ORDER** of this Court that the Order (Instrument no. 26) entered on February 9, 2007, revoking Criner's in forma pauperis status pursuant to the "Three Strikes Provision" of the Prison Litigation Reform Act is, hereby, **VACATED** and Criner **SHALL** continue to proceed in this action in forma pauperis.

It is further **ORDERED** that the Order for Collection and Payment of the Full Filing Fee (Instrument no. 14) entered on September 15, 2006, is hereby, **REINSTATED**.

It is further **ORDERED** that the Clerk of Court **SHALL** send a copy of this Order to **TDCJ-Office of the General Counsel, TDCJ Litigation Support, P. O. Box 13084, Austin, TX 78711 and TDCJ Inmate Trust Funds Division, P. O. Box 629, Huntsville, TX 77342-0629.**

**DONE** at Galveston, Texas, this 27<sup>th</sup> day of February, 2007.

  
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Samuel B. Kent  
United States District Judge